

FILED

JUN 14 1995

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DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

BOARD OF PHARMACY

By: Marianne W. Greenwald
Deputy Attorney General
Division of Law, 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Tel. (201) 648-4738

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Administrative Action

E. THOMAS KENNY, R.P. :

TO PRACTICE PHARMACY IN THE :
STATE OF NEW JERSEY :

CONSENT ORDER

This matter was opened to the New Jersey State Board of Pharmacy by the receipt of information that respondent had been convicted of Federal Income Tax Evasion. On December 2, 1994, respondent entered into a Consent Agreement with the Board of Pharmacy for the temporary surrender of his pharmacy license pending further order of the Board.

On January 12, 1994, E. Thomas Kenny entered a plea of guilty to a violation of 26 USC §7201, to wit: evading taxes by understating his income for the 1987 tax year. Pursuant to a plea agreement, respondent agreed to file amended returns for the years 1986 and 1987 and make full payment of the amount of \$33,454.00 owed to the Internal Revenue Service. The Court sentenced Kenny to two (2) months incarceration and

a \$2,000.00 fine, as well as a period of supervised release of three years immediately following the imprisonment.

Prior to his surrender for incarceration, respondent suffered an acute bout of alcohol abuse and on May 3, 1994 commenced a course of in-patient alcohol treatment. Respondent was discharged on July 12, 1994 and began serving his two month custodial sentence on July 27, 1994.

Respondent testified before this Board on January 11, 1995 that he believed his ongoing alcoholism, dating back to his early twenties, had been at the root of his criminal conduct. Although he had undertaken rehabilitative efforts in the past, respondent submitted that the most recent treatment had been by far the most intense and effective. Moreover, respondent had testified as to his dramatic and positive change in lifestyle, his commitment to sobriety and had submitted in support of these affirmations numerous letters from therapists and counselors. His probation officer had confirmed in writing that the terms of his supervised release include urine monitoring, attendance at AA/12 Step Meetings and counselling for the entire three year term of supervised release, through September 22, 1997.

Respondent further testified that he was unable to practice pharmacy for six of the last eight months and paid replacement pharmacists in excess of \$40,000.00 to maintain his practice in his store in Asbury Park. In addition, respondent had made full payment of all taxes and fines due and owing in the criminal matter. Moreover, he appeared to be progressing satisfactorily in his rehabilitative

effort and had presumably cooperated with the Board's request to refrain from practice until further order of the Board.

However, on February 21, 1995, an inspection of Home Drug Store in Asbury Park revealed that in fact respondent had worked in the store as a pharmacist on eight different occasions in December of 1994, and further again on eight different days in February 1995.

Respondent appeared before the Board again on May 24, 1995, seeking an opportunity to account for his unlicensed practice in December and February. Mr. Kenny testified that he was clearly remiss in not adhering to the directives of the prior Order. Further, Mr. Kenny submitted documentation from the probation office that his supervised release status was clearly at risk unless he resumed employment in the near future.

In consideration of all of the above, and it further appearing that the parties wish to resolve this matter without the necessity of further formal proceedings, and for good cause shown,

IT IS THEREFORE, ON THIS 14th DAY OF *June* 1995,

ORDERED:

1. The license of E. Thomas Kenny, R.P., to practice pharmacy in the State of New Jersey is hereby suspended for two (2) years and nine (9) months retroactive to March 1, 1995, at which time respondent actually began complying with the December 2, 1994 order. The first three (3) months and 16 days of said suspension shall be active; the remaining two (2) years and five (5) months and 14 days of said suspension shall be stayed and shall serve as a period of probation.

2. Respondent shall be on probation for the duration of the stayed suspension commencing no sooner than June 17, 1995, subject to

compliance with paragraphs 3 through 11 herein. If respondent violates any of the provisions of paragraphs 3 through 11 herein, the Board may initiate proceedings to revoke his probationary status and to actively suspend or revoke his license to practice pharmacy.

3. Respondent shall pay the Board for costs of the investigation and proceedings in this matter in the amount of \$1,250 prior to the commencement of the probationary period. At any time during the probation period, the Board may require the appearance of respondent at a meeting for a status conference.

4. Respondent hereby consents to the entry of an Order of Automatic Suspension of his license without notice upon the Board's receipt of any reliable information such as, but not limited to a report of a confirmed positive urine from the party responsible for monitoring respondent's urine, or information from any out-patient program, which reveals evidence of substance abuse during the probationary period.

5. Respondent shall have the right to apply for removal of the automatic suspension on two (2) days notice but in such event shall be limited to a showing that the urine tested was not his or was a false positive, in the case of urine testing, or that other information submitted was false.

6. Respondent shall have his urine monitored at his own expense on a random unannounced basis for the entire stayed suspension period on a weekly basis with direct witnessing of the samples. The initial drug screen will utilize the EMIT technique and all conforming tests and/or secondary tests will be performed by gas chromatographing/mass

spectrometry (GC/MS). The testing procedure shall include a forensic documentation thereof.

7. The result of all tests shall be reported directly to H. Lee Gladstein, Executive Director of the Board, or his designee in the event he is unavailable. The Board may at anytime alter or modify the manner of the testing directed herein. In the event of any such alteration or modification the Board shall give timely notice of any new testing requirement to the respondent.

8. In the event E. Thomas Kenny is unable to appear for a scheduled urine test due to illness or other impossibility, consent to waive that day's test must be secured from the Board office. The lab will not be authorized to provide consent. In addition, respondent must provide the Board with an written substantiation of his inability to appear, e.g. physician's report.

9. Any failure to appear for a urine test for which consent is not secured from the Board and for which no written substantiation is furnished satisfactory to the Board within two (2) days of such failure to appear shall be grounds for activation of the suspension upon short notice.

10. Respondent shall submit quarterly documentation that he attends support group meetings at least one time per week for the duration of the probationary period.

11. Respondent shall not use or possess any controlled dangerous substances, except for bona fide medical purposes as deemed necessary by a physician or other authorized prescriber during the entire period of probation. In such event, respondent is to serve notice to the

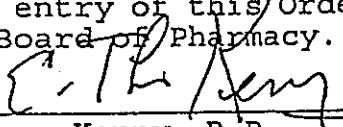
Board in writing. Respondent shall advise any and all treating physicians of his history of alcoholism.

STATE BOARD OF PHARMACY


By: 

Sophie Heymann, ~~Sec.~~, President

I have read the above Order and I understand its terms. I consent to the entry of this Order by the State Board of Pharmacy.


E. Thomas Kenny, R.P.

The above Order is agreed as to form and entry and I acknowledge that my client has read each of the individual terms of the within Order.


Lawrence S. Lustberg, Esq.

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DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

JUN 28 1996

By: Marianne W. Greenwald
Deputy Attorney General
Division of Law, 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
201-648-4738

BOARD OF PHARMACY

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION	:	
OR REVOCATION OF THE LICENSE OF	:	Administrative Action
	:	
<i>E. THOMAS KENNY, R.P.</i>	:	
	:	ORDER OF REINSTATEMENT
TO PRACTICE PHARMACY IN THE	:	
STATE OF NEW JERSEY	:	
	:	

This matter was opened to the New Jersey State Board of Pharmacy by way of application of respondent for reinstatement of his license to practice pharmacy in the State of New Jersey.

On May 26, 1996 an Order of Active Suspension was entered by the Board of Pharmacy for respondent's violation of the terms of the Consent Order for Stayed Suspension filed with the Board on June 14, 1995. (Both Orders are attached hereto and made a part of this Order.) Specifically, respondent failed to submit urine screens and documentation of attendance at support group meetings as required by the June 14, 1995 Order. Further, respondent suffered a relapse in his effort to remain sober in September of 1995.

Respondent appeared before the Board on June 12, 1996 and testified under oath as to his present state of sobriety. The aforementioned documentation was provided to the Board for the months of March, April, May and June of 1996. Respondent remained in treatment on an inpatient basis during the months of January and February and, therefore, was not tested in compliance with the prior Order of June 14, 1995.

The Board is satisfied that respondent is successfully maintaining his sobriety and that he is aware it is his responsibility alone to comply with the terms of an order of this Board.

THEREFORE, IT IS ON THIS 28th DAY OF June, 1996,

ORDERED:

1. That the license of E. Thomas Kenny, R.P., to practice pharmacy in the State of New Jersey is hereby suspended for two (2) years. All of said suspension shall be stayed and shall serve as a period of probation.

2. Respondent shall be on probation for the duration of the stayed suspension, subject to compliance with paragraphs 3 through 11 herein and is prohibited from the use of alcohol or any other mood altering drug except pursuant to paragraph 10 of this Order.

3. Respondent hereby consents to the entry of an Order of Automatic Suspension of his license without notice upon the Board's receipt of any reliable information such as, but not limited to a report of a breathalyzer test indicating the presence of alcohol,

or any information, which reveals evidence of consumption of alcohol during the probationary period.

4. Respondent shall have the right to apply for removal of the automatic suspension on two (2) days notice but in such event shall be limited to a showing that the breathalyzer test results were not his or were incorrect.

5. Respondent shall be tested at his own expense on a random unannounced basis for the entire stayed suspension period on a weekly basis. Respondent shall be required to submit to testing on a seven (7) day a week basis and test results forwarded to the Board shall indicate that respondent has been tested on a weekend no less than one time per month.

6. The results of all tests shall be reported directly to H. Lee Gladstein, Executive Director of the Board, or his designee in the event he is unavailable. The Board may at anytime alter or modify the manner of the testing directed herein. In the event of any such alteration or modification the Board shall give timely notice of any new testing requirement to the respondent.

7. In the event Respondent is unable to appear for a scheduled breathalyzer test due to illness or other impossibility, consent to waive that day's test must be secured from the Board office. The lab will not be authorized to provide consent. In addition, respondent must provide the Board with a written substantiation of his inability to appear, e.g. physician's report.

8. Any failure to appear for a breathalyzer test for which consent is not secured from the Board and for which no written


substantiation is furnished satisfactory to the Board within two (2) days of such failure to appear shall be grounds for activation of the suspension upon short notice.

9. Respondent shall submit quarterly documentation that he attends support group meetings at least one time per week for the duration of the probationary period.

10. Respondent shall not use or possess any controlled dangerous substances, except for bona fide medical purposes as deemed necessary by a physician or other authorized prescriber during the entire period of probation. In such event, respondent is to serve notice to the Board in writing. Respondent shall advise any and all treating physicians of his history of alcoholism.

11. At any time during the probation period, the Board may require the appearance of respondent at a meeting for a status conference.

STATE BOARD OF PHARMACY

By: 
Sophie Heymann, President

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DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY.

FILED

MAY 23 1995

By: Marianna W. Greenwald
Deputy Attorney General
Division of Law - 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Tel. (201) 648-4738

BOARD OF PHARMACY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF ACCOUNTANCY

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF::

Administrative Action

E. THOMAS KENNY, R.P.

ORDER FOR SURRENDER OF
LICENSE

TO PRACTICE PHARMACY IN THE
STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Pharmacy by the receipt of information alleging that respondent is presently receiving rehabilitative treatment for an alcoholism problem. Respondent entered into a Consent Order with the Board on June 14, 1995. Said Order provided for a stayed suspension of respondent's pharmacy license provided he maintained his sobriety and demonstrated his compliance by submitting weekly negative urine screens. Respondent has now suffered a second relapse, the first involving a period of in-patient treatment in September 1995. Moreover respondent has failed to comply with the June 14, 1995 Order in that he has failed to submit weekly negative urine screens since April 1996.

The Board, having determined that respondent has failed to abide by the terms of the prior Order and has engaged in substance abuse on at least two occasions during the probationary term, hereby suspends the license to practice pharmacy of E. Thomas Kenny pursuant to paragraph 5 of the June 14, 1995 Order (attached hereto and made a part of this Order).

IT IS THEREFORE ON THIS 23rd DAY OF

MAY 1996,

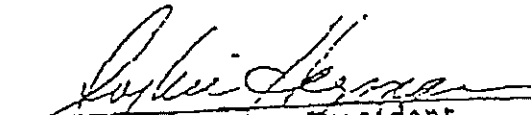
ORDERED, pending further order of the Board that the license of E. Thomas Kenny to practice pharmacy in the State of New Jersey is hereby suspended, and it is further

ORDERED, pending further order of the Board, respondent shall cease and desist from engaging in the practice of pharmacy, including the following: respondent shall not handle, order, inventory, compound, count, fill, refill or dispense any drug; he shall not handle anything requiring a prescription including devices and medications; he shall not handle prescriptions; he shall not advise or consult with any patient, and he is prohibited from being present within a prescription filling area of a pharmacy, and it is further

ORDERED, pending further order of the Board, that respondent shall by execution of the within Order surrender his original wall certificate, his wallet certificate, and his most recent renewal card of his license to an authorized representative of the Board,

ORDERED, upon application for reinstatement, respondent shall submit documentation satisfactory to the Board inclusive of, but not limited, to weekly, random, witnessed urine screens, complete treatment records of all diagnostic and rehabilitative therapy and an in-depth, current evaluation from a Board approved psychiatrist or psychologist.

NEW JERSEY STATE BOARD OF PHARMACY

By: 
Sophie Heymann, President